

FILED

MAR 21 2011

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREDRIC ALAN MAXWELL,)	CV 10-115-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
LORI DAVIDSON, Director,)	
Missoula Housing Authority;)	
MEGAN A. BUGONI, VA Liaison;)	
and ERIC K. SHINSEKI, VA Secretary,)	
)	
Defendants.)	
)	

Plaintiff Fredric Alan Maxwell filed a Complaint, as a pro se litigant, in this matter on October 7, 2010. Defendant Lori Davidson moved to dismiss Maxwell's complaint for lack of jurisdiction on November 15, 2010. On January 27, 2011, 2011, United States Magistrate Judge Jeremiah Lynch issued Findings and Recommendations which addressed Davidson's motion and recommended that this

action be dismissed. Maxwell then filed a motion to dismiss this case without prejudice on February 7, 2011 and conceded the exclusive review process of his claim for veteran benefits, referenced in Judge Lynch's Findings and Recommendations of January 27, 2011, may be available to him. Magistrate Judge Lynch then issued another Findings and Recommendations on February 25, 2011 and found that under the circumstances of this case that Maxwell's motion to dismiss without prejudice should be granted.

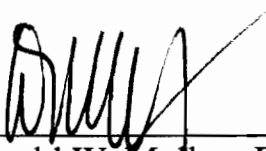
The Defendants did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch's Findings and Recommendation.

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #29) is adopted in full and the Complaint is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Davidson's motion to dismiss (dkt #14) and Judge Lynch's Findings and Recommendation (dkt #27) are deemed MOOT.

Dated this 21st day of March, 2011.



Donald W. Molloy, District Judge
United States District Court

